



CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1127

Citations Affected: IC 24-4.5; IC 24-12; IC 24-12.

Synopsis: Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (CPAP provider) provides to a consumer claimant in a civil proceeding a funded amount, the repayment of which is: (1) required only if the consumer claimant prevails in the civil proceeding; and (2) sourced from the proceeds of the civil proceeding. Permits a CPAP provider to charge: (1) a fee not exceeding an annual rate of 36% of the funded amount; (2) a servicing charge not exceeding an annual rate of 7% of the funded amount; and (3) a one time document fee not exceeding: (A) \$250 for a CPAP transaction with a funded amount of less than \$5,000; and (B) \$500 for a CPAP transaction with a funded amount of at least \$5,000; in connection with a CPAP transaction. Specifies that other than these fees and charges, a CPAP provider may not assess or collect any other fee or charge in connection with a CPAP transaction. Specifies that a CPAP transaction is not a loan. Specifies that provisions in the Uniform Consumer Credit Code (UCCC) concerning the regular schedule of payments and maximum loan term that otherwise apply to supervised loans do not apply to CPAP transactions. Establishes certain requirements, including specified disclosures, for a CPAP contract and requires that, if the consumer entering into the CPAP transaction is represented by an attorney, the consumer's attorney must review the CPAP contract. Sets forth prohibited acts with respect to: (1) CPAP providers; and (2) attorneys representing consumer claimants. Provides that after December 31, 2016, a person may not regularly engage in the business of making CPAP transactions in Indiana unless the person obtains, and maintains on an annual basis, a CPAP license issued by the department of financial institutions (department). Allows the department to adopt rules or policies to implement these provisions. **(This conference committee report does the following: (1) Changes the fee that CPAP providers may charge in connection with a CPAP transaction from a fee at an annual rate not exceeding 38% of the funded amount, to a fee at an annual rate not exceeding 36% of the funded amount. (2) Replaces language allowing CPAP providers to charge a deferral charge at an annual rate of 38% of the deferred amount, with language allowing CPAP providers to charge a servicing charge not exceeding an annual rate of 7% of the funded amount. (4) Replaces language allowing a CPAP provider to impose a one**



time document fee not exceeding: (A) \$250, if the funded amount is less than \$2,500; or (B) \$500, if the funded amount is at least \$2,500; with language allowing a CPAP provider to charge a one time document fee not exceeding \$250, if the funded amount is less than \$5,000, or \$500, if the funded amount is at least \$5,000. (5) Specifies that CPAP transactions are subject to the UCCC. (6) Specifies that CPAP providers may not impose or collect finance charges set forth in the UCCC. (7) Makes technical changes.)

Effective: July 1, 2016.



CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1127 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 24-4.5-1-201.1 IS ADDED TO THE INDIANA
- 3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2016]: **Sec. 201.1. CPAP transactions, as**
- 5 **defined in section 301.5 of this chapter, are subject to this article**
- 6 **and to IC 24-12.**
- 7 SECTION 2. IC 24-4.5-1-301.5, AS AMENDED BY P.L.137-2014,
- 8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2016]: Sec. 301.5. In addition to definitions appearing in
- 10 subsequent chapters in this article, the following definitions apply
- 11 throughout this article:
- 12 (1) "Affiliate", with respect to any person subject to this article,
- 13 means a person that, directly or indirectly, through one (1) or more
- 14 intermediaries:
- 15 (a) controls;
- 16 (b) is controlled by; or
- 17 (c) is under common control with;
- 18 the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and
- (e) with respect to a sale of goods or services, either:
 - (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$53,500) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
 - (ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in

which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either:
 - (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$53,500) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
 - (ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonus,
 2 or otherwise, and includes periodic payments under a pension or
 3 retirement program.

4 (16) "Employee" means an individual who is paid wages or other
 5 compensation by an employer required under federal income tax law
 6 to file Form W-2 on behalf of the individual.

7 (17) "Federal banking agencies" means the Board of Governors of
 8 the Federal Reserve System, the Office of the Comptroller of the
 9 Currency, the Office of Thrift Supervision, the National Credit Union
 10 Administration, and the Federal Deposit Insurance Corporation.

11 (18) "First lien mortgage transaction" means:

12 (a) a consumer loan; or

13 (b) a consumer credit sale;

14 that is or will be used by the debtor primarily for personal, family, or
 15 household purposes and that is secured by a mortgage or a land
 16 contract (or another consensual security interest equivalent to a
 17 mortgage or a land contract) that constitutes a first lien on a dwelling
 18 or on residential real estate upon which a dwelling is constructed or
 19 intended to be constructed.

20 (19) "Immediate family member" means a spouse, child, sibling,
 21 parent, grandparent, or grandchild. The term includes stepparents,
 22 stepchildren, stepsiblings, and adoptive relationships.

23 (20) "Individual" means a natural person.

24 (21) "Lender credit card or similar arrangement" means an
 25 arrangement or loan agreement, other than a seller credit card, pursuant
 26 to which a lender gives a debtor the privilege of using a credit card,
 27 letter of credit, or other credit confirmation or identification in
 28 transactions out of which debt arises:

29 (a) by the lender's honoring a draft or similar order for the
 30 payment of money drawn or accepted by the debtor;

31 (b) by the lender's payment or agreement to pay the debtor's
 32 obligations; or

33 (c) by the lender's purchase from the obligee of the debtor's
 34 obligations.

35 (22) "Licensee" means a person licensed as a creditor under this
 36 article.

37 (23) "Loan brokerage business" means any activity in which a
 38 person, in return for any consideration from any source, procures,
 39 attempts to procure, or assists in procuring, a mortgage transaction
 40 from a third party or any other person, whether or not the person
 41 seeking the mortgage transaction actually obtains the mortgage
 42 transaction.

43 (24) "Loan processor or underwriter" means an individual who
 44 performs clerical or support duties as an employee at the direction of,
 45 and subject to the supervision and instruction of, a person licensed or
 46 exempt from licensing under this article. For purposes of this
 47 subsection, the term "clerical or support duties" may include, after the
 48 receipt of an application, the following:

49 (a) The receipt, collection, distribution, and analysis of
 50 information common for the processing or underwriting of a

1 mortgage transaction.

2 (b) The communication with a consumer to obtain the information
3 necessary for the processing or underwriting of a loan, to the
4 extent that the communication does not include:

5 (i) offering or negotiating loan rates or terms; or

6 (ii) counseling consumers about mortgage transaction rates or
7 terms.

8 An individual engaging solely in loan processor or underwriter
9 activities shall not represent to the public through advertising or other
10 means of communicating or providing information, including the use
11 of business cards, stationery, brochures, signs, rate lists, or other
12 promotional items, that the individual can or will perform any of the
13 activities of a mortgage loan originator.

14 (25) "Mortgage loan originator" means an individual who, for
15 compensation or gain, or in the expectation of compensation or gain,
16 regularly engages in taking a mortgage transaction application or in
17 offering or negotiating the terms of a mortgage transaction that either
18 is made under this article or under IC 24-4.4 or is made by an employee
19 of a person licensed or exempt from licensing under this article or
20 under IC 24-4.4, while the employee is engaging in the loan brokerage
21 business. The term does not include the following:

22 (a) An individual engaged solely as a loan processor or
23 underwriter as long as the individual works exclusively as an
24 employee of a person licensed or exempt from licensing under
25 this article.

26 (b) Unless the person or entity is compensated by:

27 (i) a creditor;

28 (ii) a loan broker;

29 (iii) another mortgage loan originator; or

30 (iv) any agent of the creditor, loan broker, or other mortgage
31 loan originator described in items (i) through (iii);

32 a person or entity that only performs real estate brokerage
33 activities and is licensed or registered in accordance with
34 applicable state law.

35 (c) A person solely involved in extensions of credit relating to
36 timeshare plans (as defined in 11 U.S.C. 101(53D)).

37 (26) "Mortgage servicer" means the last person to whom a
38 mortgagor or the mortgagor's successor in interest has been instructed
39 by a mortgagee to send payments on a loan secured by a mortgage.

40 (27) "Mortgage transaction" means:

41 (a) a consumer loan; or

42 (b) a consumer credit sale;

43 that is or will be used by the debtor primarily for personal, family, or
44 household purposes and that is secured by a mortgage or a land
45 contract (or another consensual security interest equivalent to a
46 mortgage or a land contract) on a dwelling or on residential real estate
47 upon which a dwelling is constructed or intended to be constructed.

48 (28) "Nationwide Mortgage Licensing System and Registry", or
49 "NMLSR", means a mortgage licensing system developed and
50 maintained by the Conference of State Bank Supervisors and the

1 American Association of Residential Mortgage Regulators for the
2 licensing and registration of creditors and mortgage loan originators.

3 (29) "Nontraditional mortgage product" means any mortgage
4 product other than a thirty (30) year fixed rate mortgage.

5 (30) "Official fees" means:

6 (a) fees and charges prescribed by law which actually are or will
7 be paid to public officials for determining the existence of or for
8 perfecting, releasing, or satisfying a security interest related to a
9 consumer credit sale, consumer lease, or consumer loan; or

10 (b) premiums payable for insurance in lieu of perfecting a security
11 interest otherwise required by the creditor in connection with the
12 sale, lease, or loan, if the premium does not exceed the fees and
13 charges described in paragraph (a) that would otherwise be
14 payable.

15 (31) "Organization" means a corporation, a government or
16 governmental subdivision, an agency, a trust, an estate, a partnership,
17 a limited liability company, a cooperative, an association, a joint
18 venture, an unincorporated organization, or any other entity, however
19 organized.

20 (32) "Payable in installments" means that payment is required or
21 permitted by written agreement to be made in more than four (4)
22 installments not including a down payment.

23 (33) "Person" includes an individual or an organization.

24 (34) "Person related to" with respect to an individual means:

25 (a) the spouse of the individual;

26 (b) a brother, brother-in-law, sister, or sister-in-law of the
27 individual;

28 (c) an ancestor or lineal descendants of the individual or the
29 individual's spouse; and

30 (d) any other relative, by blood or marriage, of the individual or
31 the individual's spouse who shares the same home with the
32 individual.

33 (35) "Person related to" with respect to an organization means:

34 (a) a person directly or indirectly controlling, controlled by, or
35 under common control with the organization;

36 (b) a director, an executive officer, or a manager of the
37 organization or a person performing similar functions with respect
38 to the organization or to a person related to the organization;

39 (c) the spouse of a person related to the organization; and

40 (d) a relative by blood or marriage of a person related to the
41 organization who shares the same home with the person.

42 (36) "Presumed" or "presumption" means that the trier of fact must
43 find the existence of the fact presumed, unless and until evidence is
44 introduced that would support a finding of its nonexistence.

45 (37) "Real estate brokerage activity" means any activity that
46 involves offering or providing real estate brokerage services to the
47 public, including the following:

48 (a) Acting as a real estate agent or real estate broker for a buyer,
49 seller, lessor, or lessee of real property.

50 (b) Bringing together parties interested in the sale, purchase,

1 lease, rental, or exchange of real property.

2 (c) Negotiating, on behalf of any party, any part of a contract
3 relating to the sale, purchase, lease, rental, or exchange of real
4 property (other than in connection with providing financing with
5 respect to the sale, purchase, lease, rental, or exchange of real
6 property).

7 (d) Engaging in any activity for which a person is required to be
8 registered or licensed as a real estate agent or real estate broker
9 under any applicable law.

10 (e) Offering to engage in any activity, or act in any capacity,
11 described in this subsection.

12 (38) "Registered mortgage loan originator" means any individual
13 who:

14 (a) meets the definition of mortgage loan originator and is an
15 employee of:

16 (i) a depository institution;

17 (ii) a subsidiary that is owned and controlled by a depository
18 institution and regulated by a federal banking agency; or

19 (iii) an institution regulated by the Farm Credit
20 Administration; and

21 (b) is registered with, and maintains a unique identifier through,
22 the NMLSR.

23 (39) "Regularly engaged", with respect to a person who extends
24 consumer credit, refers to a person who:

25 (a) extended consumer credit:

26 (i) more than twenty-five (25) times; or

27 (ii) more than five (5) times for a mortgage transaction secured
28 by a dwelling;

29 in the preceding calendar year; or

30 (b) extends or will extend consumer credit:

31 (i) more than twenty-five (25) times; or

32 (ii) more than five (5) times for a mortgage transaction secured
33 by a dwelling;

34 in the current calendar year, if the person did not meet the
35 numerical standards described in subdivision (a) in the preceding
36 calendar year.

37 (40) "Residential real estate" means any real property that is located
38 in Indiana and on which there is located or intended to be constructed
39 a dwelling.

40 (41) "Seller credit card" means an arrangement that gives to a buyer
41 or lessee the privilege of using a credit card, letter of credit, or other
42 credit confirmation or identification for the purpose of purchasing or
43 leasing goods or services from that person, a person related to that
44 person, or from that person and any other person. The term includes a
45 card that is issued by a person, that is in the name of the seller, and that
46 can be used by the buyer or lessee only for purchases or leases at
47 locations of the named seller.

48 (42) "Subordinate lien mortgage transaction" means:

49 (a) a consumer loan; or

50 (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:

(a) Maintains tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Promotes affordable housing or provides home ownership education or similar services.

(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

(46) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in IC 24-4.5-3-110.

(47) "Civil proceeding", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(48) "Civil proceeding advance payment contract", or "CPAP contract", has the meaning set forth in IC 24-4.5-3-110.5.

(49) "Civil proceeding advance payment provider", or "CPAP provider", has the meaning set forth in IC 24-4.5-3-110.5.

(50) "Consumer claimant", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(51) "Funded amount", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

SECTION 3. IC 24-4.5-3-110 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 110. (1) "Civil proceeding**

advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

- (a) required only if the consumer claimant prevails in the civil proceeding; and
- (b) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(2) The term includes a transaction:

(a) that is termed or described as:

- (i) a purchase; or
- (ii) an assignment of an interest in a consumer claimant's civil proceeding, or in the proceeds of a consumer claimant's civil proceeding;

by the CPAP provider; or

(b) with respect to which the CPAP provider sets forth in a CPAP contract, an agreement by:

- (i) the CPAP provider to purchase from the consumer claimant; or
- (ii) the consumer claimant to assign to the CPAP provider; a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(3) Notwithstanding section 202(1)(i) of this chapter and section 502(6) of this chapter, a CPAP transaction is not a consumer loan.

SECTION 4. IC 24-4.5-3-110.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 110.5. (1) "Civil proceeding", with respect to a CPAP transaction, means:

- (a) a civil action;
- (b) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or
- (c) an administrative proceeding before:
 - (i) an agency or instrumentality of the state; or
 - (ii) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;

that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or instrumentality described in subdivision (c) in Indiana. The term includes all proceedings arising out of or relating to the proceeding, including any proceedings on appeal or remand, and any enforcement, ancillary, or parallel proceedings.

(2) "Civil proceeding advance payment contract", or "CPAP contract", means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.

(3) "Civil proceeding advance payment provider", or "CPAP provider", means a person that:

(a) enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding; and

(b) notwithstanding section 110(3) of this chapter, and subject to IC 24-12-9, is licensed with the department in accordance with this chapter and IC 24-12-9.

(4) "Consumer claimant" means an individual:

(a) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and

(b) who:

(i) is offered a CPAP transaction by a CPAP provider; or

(ii) enters into a CPAP transaction with a CPAP provider;

regardless of whether the individual is a resident of Indiana.

(5) "Funded amount", with respect to a CPAP transaction, means the amount of money:

(a) that is provided to the consumer claimant by the CPAP provider; and

(b) the repayment of which is:

(i) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(ii) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount.

SECTION 5. IC 24-4.5-3-202, AS AMENDED BY P.L.217-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in

- 1 the loan finance charge.
- 2 (v) Appraisal fees.
- 3 (e) Notwithstanding provisions of the Federal Consumer Credit
 4 Protection Act concerning disclosure, charges for other benefits,
 5 including insurance, conferred on the debtor, if the benefits are of
 6 value to the debtor and if the charges are reasonable in relation to
 7 the benefits, and are excluded as permissible additional charges
 8 from the loan finance charge. With respect to any other additional
 9 charge not specifically provided for in this section to be a
 10 permitted charge under this subsection, the creditor must submit
 11 a written explanation of the charge to the department indicating
 12 how the charge would be assessed and the value or benefit to the
 13 debtor. Supporting documents may be required by the department.
 14 The department shall determine whether the charge would be of
 15 benefit to the debtor and is reasonable in relation to the benefits.
- 16 (f) A charge not to exceed twenty-five dollars (\$25) for each
 17 return by a bank or other depository institution of a dishonored
 18 check, negotiable order of withdrawal, or share draft issued by the
 19 debtor.
- 20 (g) With respect to a revolving loan account, a fee not to exceed
 21 twenty-five dollars (\$25) in each billing cycle during which the
 22 balance due under the revolving loan account exceeds by more
 23 than one hundred dollars (\$100) the maximum credit limit for the
 24 account established by the lender.
- 25 (h) With respect to a revolving loan account, a transaction fee that
 26 may not exceed the lesser of the following:
- 27 (i) Two percent (2%) of the amount of the transaction.
- 28 (ii) Ten dollars (\$10).
- 29 **(i) This subdivision applies to a CPAP transaction offered or**
 30 **entered into after June 30, 2016. With respect to a CPAP**
 31 **transaction, a CPAP provider may impose the following**
 32 **charges and fees:**
- 33 **(i) A fee calculated at an annual rate that does not exceed**
 34 **thirty-six percent (36%) of the funded amount.**
- 35 **(ii) A servicing charge calculated at an annual rate that**
 36 **does not exceed seven percent (7%) of the funded amount.**
- 37 **(iii) If the funded amount of the CPAP transaction is less**
 38 **than five thousand dollars (\$5,000), a one (1) time charge**
 39 **that does not exceed two hundred fifty dollars (\$250) for**
 40 **obtaining and preparing documents.**
- 41 **(iv) If the funded amount of the CPAP transaction is at**
 42 **least five thousand dollars (\$5,000), a one (1) time charge**
 43 **that does not exceed five hundred dollars (\$500) for**
 44 **obtaining and preparing documents.**
- 45 **A CPAP provider may not assess, or collect from the**
 46 **consumer claimant, any other fee or charge in connection**
 47 **with a CPAP transaction, including any finance charges under**
 48 **section 201 or 508 of this chapter.**
- 49 The additional charges provided for in subdivisions (f), (g), ~~and~~ (h),
 50 **and (i)** are not subject to refund or rebate.
- 51 (2) An additional charge may be made for insurance in connection

1 with the loan, other than insurance protecting the lender against the
2 debtor's default or other credit loss:

3 (a) with respect to insurance against loss of or damage to property
4 or against liability, if the lender furnishes a clear and specific
5 statement in writing to the debtor, setting forth the cost of the
6 insurance if obtained from or through the lender and stating that
7 the debtor may choose the person, subject to the lender's
8 reasonable approval, through whom the insurance is to be
9 obtained; and

10 (b) with respect to consumer credit insurance providing life,
11 accident, unemployment or other loss of income, or health
12 coverage, if the insurance coverage is not a factor in the approval
13 by the lender of the extension of credit and this fact is clearly
14 disclosed in writing to the debtor, and if, in order to obtain the
15 insurance in connection with the extension of credit, the debtor
16 gives specific affirmative written indication of the desire to do so
17 after written disclosure of the cost of the insurance.

18 SECTION 6. IC 24-4.5-3-502, AS AMENDED BY P.L.186-2015,
19 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2016]: Sec. 502. (1) A person that is a:

21 (a) depository institution;

22 (b) subsidiary that is owned and controlled by a depository
23 institution and regulated by a federal banking agency; or

24 (c) credit union service organization;

25 may engage in Indiana in the making of consumer loans (including
26 small loans that are subject to IC 24-4.5-7) that are not mortgage
27 transactions without obtaining a license under this article.

28 (2) A collection agency licensed under IC 25-11-1 may engage in:

29 (a) taking assignments of consumer loans (including small loans
30 that are subject to IC 24-4.5-7) that are not mortgage transactions;
31 and

32 (b) undertaking the direct collection of payments from or the
33 enforcement of rights against debtors arising from consumer loans
34 (including small loans that are subject to IC 24-4.5-7) that are not
35 mortgage transactions;

36 in Indiana without obtaining a license under this article.

37 (3) A person that does not qualify under subsection (1) or (2) shall
38 acquire and retain a license under this chapter in order to regularly
39 engage in Indiana in the following actions with respect to consumer
40 loans that are not small loans (as defined in IC 24-4.5-7-104) or
41 mortgage transactions:

42 (a) The making of consumer loans.

43 (b) Taking assignments of consumer loans.

44 (c) Undertaking the direct collection of payments from or the
45 enforcement of rights against debtors arising from consumer
46 loans.

47 (4) A separate license under this chapter is required for each legal
48 entity that engages in Indiana in any activity described in subsection

49 (3). However, a separate license under this chapter is not required for
50 each branch of a legal entity licensed under this chapter to perform an

activity described in subsection (3).

(5) Except as otherwise provided in subsections (1) and (2), a separate license under IC 24-4.5-7 is required in order to regularly engage in Indiana in the following actions with respect to small loans (as defined in IC 24-4.5-7-104):

(a) The making of small loans (as defined in IC 24-4.5-7-104).

(b) Taking assignments of small loans (as defined in IC 24-4.5-7-104).

(c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from small loans (as defined in IC 24-4.5-7-104).

A person that seeks licensure under IC 24-4.5-7 in order to regularly engage in Indiana in the actions set forth in this subsection shall apply to the department for that license in the form and manner prescribed by the department, and is subject to the same licensure requirements and procedures as an applicant for a license to make consumer loans (other than small loans or mortgage transactions) under this section.

(6) A CPAP contract must comply with IC 24-12-2.

SECTION 7. IC 24-12 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

ARTICLE 12. CIVIL PROCEEDING ADVANCE PAYMENTS

Chapter 1. Definitions

Sec. 1. The following definitions apply throughout this article:

(1) "Advertise" means publishing or disseminating any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a CPAP transaction.

(2) "Charges" means the amount of money to be paid to a CPAP provider by or on behalf of a consumer above the funded amount provided by or on behalf of the CPAP provider to a consumer claimant. The term includes all administrative, origination, underwriting, and other fees no matter how denominated.

(3) "Civil proceeding", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(4) "Civil proceeding advance payment provider", or "CPAP provider", has the meaning set forth in IC 24-4.5-3-110.5.

(5) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in IC 24-4.5-3-110.

(6) "Consumer claimant", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(7) "Funded amount", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.

(8) "Funding date" means the date on which the funded amount is transferred to the consumer claimant by the CPAP

provider, by:

(A) personal delivery, wire, Automated Clearing House (ACH), or other electronic means; or

(B) insured, certified, or registered United States mail.

(9) "Resolution date" means the date the amount funded to the consumer claimant, plus the agreed upon charges, are delivered to the CPAP provider.

Chapter 2. CPAP Contract Requirements

Sec. 1. Every CPAP transaction must meet the following requirements:

(1) The CPAP contract must be completely filled in when presented to the consumer claimant for signature.

(2) The CPAP contract must contain, in bold and boxed type, a right of rescission, allowing the consumer claimant to cancel the contract without penalty or further obligation if, not later than five (5) business days after the funding date, the consumer claimant either:

(A) returns to the CPAP provider the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or

(B) mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order.

(3) The CPAP contract must contain the initials of the consumer claimant on each page.

(4) If the consumer claimant is represented by an attorney in the civil proceeding on which a CPAP transaction is based, the CPAP contract must contain a written acknowledgment by the attorney that attests to the following:

(A) That to the best of the attorney's knowledge, all costs and charges relating to the CPAP transaction have been disclosed to the consumer claimant.

(B) That the attorney is being paid by the consumer claimant on a contingency basis under a written fee agreement.

(C) That all proceeds of the civil proceeding will be disbursed through a trust account of the attorney, or through a settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant.

(D) That the attorney is following the instructions of the consumer claimant with respect to the CPAP transaction.

(E) That the attorney has not received a referral fee or other consideration from the CPAP provider, and agrees not to receive a referral fee or other consideration from the CPAP provider at any time, in connection with the CPAP transaction.

If the attorney retained by the consumer claimant in the

consumer claimant's civil proceeding does not complete the acknowledgment required by this subdivision, the CPAP contract, and the CPAP transaction to which it pertains, are void. However, the CPAP contract, and the CPAP transaction to which it pertains, remain valid and enforceable if the consumer claimant or the attorney terminates the representation.

Chapter 3. CPAP Provider Prohibitions

Sec. 1. A CPAP provider may not do any of the following:

(1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees for referring a consumer claimant to the provider.

(2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.

(3) Intentionally advertise materially false or misleading information regarding the CPAP provider's products or services.

(4) Refer, in furtherance of an initial CPAP transaction, a consumer claimant or potential consumer claimant to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a consumer claimant needs legal representation, the company may refer the person to a local or state bar association referral service.

(5) Knowingly provide funding to a consumer claimant who has previously assigned or sold a part of the consumer claimant's right to proceeds from the consumer claimant's civil proceeding without first making payment to or purchasing a prior unsatisfied CPAP provider's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the prior CPAP provider. However, multiple CPAP providers may agree to provide a CPAP transaction to a consumer claimant simultaneously if the consumer claimant and the consumer claimant's attorney consent to the arrangement in writing.

(6) Receive any right to make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the consumer claimant and the attorney in the civil proceeding.

(7) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the civil proceeding, using funds from the CPAP transaction.

Chapter 4. Disclosures

Sec. 1. Each CPAP contract must contain the disclosures specified in this section, which are material terms of the contract. Unless otherwise specified, the disclosures must be in at least a 12

point bold font and be placed clearly and conspicuously within the contract. The following disclosures are required:

(1) On the front page, under appropriate headings, language specifying:

(A) the funded amount to be paid to the consumer claimant by the CPAP provider;

(B) an itemization of one (1) time charges;

(C) the total amount to be assigned by the consumer claimant to the CPAP provider, including the funded amount and all charges; and

(D) a payment schedule including the funded amount and all charges, listing all dates and the amount due at the end of each one hundred eighty (180) day period, from the funding date until the date on which the maximum amount due to the CPAP provider by the consumer claimant occurs.

(2) A notice within the body of the contract stating the following: "Consumer Claimant's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days after the funding date if you either:

(A) return to the CPAP provider the full amount of the disbursed funds by delivering the provider's uncashed check to the provider's office in person; or

(B) mail, by insured, certified, or registered United States mail, to the CPAP provider at the address specified in the contract, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider's uncashed check or a registered or certified check or money order."

(3) A notice informing the consumer claimant that the CPAP provider has no role in deciding whether, when, and how much the civil proceeding is settled for. However, the consumer claimant and consumer claimant's attorney must notify the CPAP provider of the outcome of the civil proceeding by settlement or adjudication before the resolution date. The CPAP provider may seek updated information about the status of the civil proceeding but in no event may the provider interfere with the independent professional judgment of the attorney in the handling of the civil proceeding or any settlement.

(4) Within the body of the contract, in all capital letters in at least a 12 point bold font contained within a box the following: "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL PROCEEDING. YOU WILL NOT OWE (INSERT NAME OF THE CIVIL PROCEEDING ADVANCE PAYMENT PROVIDER) ANYTHING IF THERE ARE NO PROCEEDS

1 FROM YOUR CIVIL PROCEEDING, UNLESS YOU HAVE
 2 VIOLATED ANY MATERIAL TERM OF THIS
 3 CONTRACT OR YOU HAVE COMMITTED FRAUD
 4 AGAINST THE CIVIL PROCEEDING ADVANCE
 5 PAYMENT PROVIDER."

6 (5) Located immediately above the place on the contract
 7 where the consumer claimant's signature is required, in at
 8 least a 12 point bold font the following: "Do not sign this
 9 contract before you read it completely or if the contract
 10 contains any blank spaces. You are entitled to a completely
 11 filled in copy of the contract. Before you sign this contract,
 12 you should obtain the advice of an attorney. Depending on the
 13 circumstances, you may want to consult a tax, public or
 14 private benefits planning, or financial professional. You
 15 acknowledge that your attorney in the civil proceeding has
 16 provided no tax, public or private benefit planning, or
 17 financial advice regarding this transaction."

18 Chapter 5. Violations

19 Sec. 1. (a) The department of financial institutions may enforce
 20 this article.

21 (b) This article does not restrict the exercise of powers or the
 22 performance of the duties of the department of financial
 23 institutions.

24 Sec. 2. If a court with jurisdiction determines that a CPAP
 25 provider has intentionally violated the provisions of this article
 26 with regard to a specific CPAP transaction, the CPAP provider is
 27 entitled to recover only the funded amount provided to the
 28 consumer claimant in that CPAP transaction and is not entitled to
 29 any additional charges.

30 Chapter 6. Assignability

31 Sec. 1. A consumer claimant may assign the contingent right to
 32 receive an amount of the potential proceeds of a civil proceeding.

33 Sec. 2. This article may not be construed to cause any CPAP
 34 transaction that complies with this article to be considered a loan
 35 or to be otherwise subject to any other provisions of Indiana law
 36 governing loans.

37 Chapter 7. Attorney Prohibitions

38 Sec. 1. An attorney or law firm retained by the consumer
 39 claimant in the civil proceeding may not have a financial interest
 40 in the CPAP provider offering a CPAP transaction to that
 41 consumer claimant. Additionally, any attorney who has referred
 42 the consumer claimant to the consumer claimant's retained
 43 attorney may not have a financial interest in the CPAP provider
 44 offering a CPAP transaction to that consumer claimant.

45 Chapter 8. Privileged Communication

46 Sec. 1. No communication between the consumer claimant's
 47 attorney in the civil proceeding and the CPAP provider with
 48 respect to the CPAP transaction limits, waives, or abrogates the
 49 scope or nature of any statutory or common law privilege,
 50 including the work product doctrine and the attorney client
 51 privilege.

Chapter 9. Licensure

Sec. 1. After December 31, 2016, a person may not regularly engage (as determined in accordance with the number of transactions set forth in IC 24-4.5-1-301.5(39)) in the business of making CPAP transactions in Indiana unless the person obtains, and maintains on an annual basis, a CPAP license issued by the department under IC 24-4.5-3.

Sec. 2. Every person shall, at the time of filing for licensure, file with the department of financial institutions, if required by the department, a bond satisfactory to the department in an amount not to exceed fifty thousand dollars (\$50,000). Instead of the bond, at the option of the person, the person may post an irrevocable letter of credit. The terms of the bond must run concurrently with the period during which the license will be in effect. The bond must provide that the person will faithfully follow the law.

Sec. 3. A CPAP transaction entered into before July 1, 2016, is not subject to this article or to IC 24-4.5.

Chapter 10. Rules

Sec. 1. The department of financial institutions may adopt rules under IC 4-22-2 or policies to implement this article. The department of financial institutions has all authority and powers necessary to regulate CPAP transactions, including the right to require the department's prior approval of:

- (1) CPAP contracts;
- (2) disclosures; and
- (3) other documents;

to be used by CPAP providers in entering into CPAP transactions, in order to ensure that consumer complainants are provided with a detailed explanation of the costs and obligations involved in a CPAP transaction before entering into a CPAP contract.

(Reference is to EHB 1127 as reprinted February 26, 2016.)

Conference Committee Report
on
Engrossed House Bill 1127

Signed by:

Representative Lehman
Chairperson

Senator Head

Representative Austin

Senator Taylor

House Conferees

Senate Conferees